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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 001655

SIPDIS

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SUBJECT: BOSNIA - BACKSLIDING ON BRCKO

REF: A. 07 SARAJEVO 1577 B. SARAJEVO 1507 C. SARAJEVO
1348

Classified By: Ambassador Charles L. English. Reasons 1.4 (b) and (d).

¶1. (C) SUMMARY: With the municipal elections behind us and the November PIC approaching, OHR and Bosnian leaders are again discussing the five objectives and two conditions for OHR closure. Among the outstanding objectives is the completion of the Brcko Final Award, which requires the Supervisor to certify to the Tribunal that the Final Award is "functioning effectively and apparently permanently." This involves, inter alia, ensuring adequate legal protections vis-a-vis Brcko District's relationship with the state and entities, including a domestic substitute for the Tribunal and guaranteed access for Brcko -- as an "institution" of Bosnia -- to the Constitutional Court. Brcko Supervisor and PDHR Raffi Gregorian has stressed that constitutional amendments on Brcko are the best, if not only, means of accomplishing this goal. However, most parties are walking back from previous commitments to support the two constitutional amendments the Supervisor prepared after consultation with them. Bosniak tri-presidency member Haris Silajdzic is tying amendments on Brcko to constitutional reform as a whole, arguing against any piecemeal changes to the constitution. Republika Srpska PM Milorad Dodik -- whose party's support for the amendments is essential to ensure their passage in parliament -- suddenly opposed them this summer, possibly because of personal animosity toward Gregorian. If the parties do not reach agreement and adopt the amendments, there is not a clear way forward for closing out this PIC objective. To prevent this outcome, we will need to apply maximum political pressure -- in concert with the other PIC member states -- on Dodik and his party to again support the amendments. END SUMMARY.

Brcko Unresolved at Dayton

¶2. (SBU) The Dayton Accords did not settle the territorial status of Brcko District, instead setting Brcko aside for binding international arbitration. This arbitration resulted in the March 1999 Final Award, which established Brcko District as a single, multi-ethnic, administrative unit. (Note: Although the Final Award is final and binding on all Dayton signatories per Annex 2 of Dayton, the Republika Srpska, RS, officially rejected it and has maintained that position ever since. End Note) All parties claim that they are willing to ensure that Brcko -- which is held in "condominium" between the two entities (per the Final Award) -- has adequate legal protections vis-a-vis the entities and the state. To accomplish this, Brcko Supervisor and PDHR Gregorian (with our support) -- after consulting with

political leaders -- proposed the adoption of two constitutional amendments on Brcko (ref A). This is one of the five objectives and two conditions that must be met for OHR closure. One amendment would constitutionally define the District using language from the Final Award, and the second would provide Brcko a mechanism for securing access to the Constitutional Court. All major parties were initially on board with these amendments, but Party for Bosnia and Herzegovina (SBiH) and the Alliance of Independent Social Democrats (SNSD) subsequently rescinded their support and now favor only a state law to settle Brcko.

Why a Law Is Not Sufficient

13. (C) Gregorian has noted that a state law alone will not suffice to certify completion of the Final Award, primarily because per the Dayton Accords, a law could not regulate the relations of the entities with the District or grant Brcko access to the Constitutional Court, as Brcko's status is not codified in the constitution. A state law also would not sufficiently bind the entities to cooperate with Brcko on matters of mutual debt or tax revenue allocation, areas of contention between Brcko in the entities over the past two years. Moreover, RS PM Milorad Dodik's government has developed a habit of either ignoring or withdrawing from state laws, including those for which it voted. For example, despite a state law regulating the matter, the RS has issued its own bonds for settling debts related to frozen foreign currency accounts, blocking the issuance of bonds in the rest of Bosnia and thus placing Brcko in financial jeopardy.

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Bosniaks: SDA On Board, SBiH Balks

14. (C) Sulejman Tihic's Party for Democratic Action (SDA) supports the amendments and publicly endorsed them in the party's September 20 Declaration on the Dayton Agreement (ref B). According to SDA Vice President Mirsad Kebo, SDA believes Brcko's potential to become a flashpoint in Bosnia, given its history, underscores the importance for SDA of codifying Brcko's status in the constitution. Two SBiH insiders reinforced to us, though, the party's long-term position that opposes any a la carte constitutional changes. They noted that SBiH would support an amendment on Brcko only if the entire constitution were reopened for negotiation. Despite signaling earlier that he would support the amendments, SBiH chairman Haris Silajdzic now argues (incorrectly) that Brcko already has access to the Constitutional Court under existing Bosnian law and that constitutional amendments are therefore unnecessary. SBiH, however, lacks the strength in parliament to block the amendments as long as the other Bosniak parties support them. (Note: Constitutional amendments would require a two-thirds majority from both houses of the state-level parliament. End Note)

Serbs: The Battle is Personal

15. (C) In a stark departure from what Dodik's point man on Brcko, Igor Radojicic, initially told Gregorian, Dodik has backed away from his support for constitutional amendments on Brcko. Dodik's support for the amendments is crucial, as the amendments could not pass in parliament without SNSD backing. Dodik's seemingly sudden intransigence on the amendments may stem in part from what he sees as a personal battle with PDHR Gregorian. Dodik has accused Gregorian of launching a campaign to oust Dodik, citing "confidential information" that Gregorian had ordered SIPA to probe several RS projects for traces of corruption. He has also said that Gregorian "has placed himself at the forefront of foreigners who are against the RS." Although Dodik's comments are not specifically linked to Brcko, his personal animosity toward

Gregorian may be behind his flip-flop on the amendments. In an October 24 meeting, HighRep Lajcak speculated that Dodik and RS officials may oppose the amendments because they want "to leave open" the possibility of unifying the RS, an option they may believe the amendment forestalls.

Croats: Relatively Quiet

16. (C) Among the Croat parties, HDZ-BiH voiced support for constitutional amendments on Brcko in the August 23 caucus of the leaders of the ruling coalition (ref C) but has said very little about the issue in press. HDZ-1990 endorsed amendments initially but rescinded its support when Silajdzic and Dodik backed off, and now party chairman Bozo Ljubic has stated that amendments are not necessary. An HDZ-1990 official expressed concern to us that revising the constitution to include Brcko might open the door for others (implying the RS) to attempt to change their status in Bosnia. HDZ-1990, though, has only two seats in the state parliament and is therefore not essential to pass the amendments.

Comment

17. (C) As long as major parties -- particularly SNSD -- are inclined to cut corners on Brcko, Bosnia will face significant difficulties meeting this PIC requirement. Moreover, OHR may not provide the impetus necessary for its completion. Although Lajcak has a renewed energy for resolving "5-plus-2," he also believes that OHR can transition to EUSR even as the Supervisory regime remains in Brcko. Such a dangerous notion, coupled with Bosnian leaders' recalcitrance, may lead to a watered-down agreement on Brcko along the lines of the police reform agreement this past spring. This outcome would set a bad precedent for other conditions for OHR closure, exacerbating the view on all sides that the international community will eventually tire of waiting and walk back from stated requirements. Brcko since its inception has been a uniquely American

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project -- all Supervisors have been Americans, and Brcko has received high levels of US assistance -- and Brcko's multi-ethnic institutions have been touted as a model for the rest of Bosnia. Our engagement on Brcko -- and consistent political pressure on Dodik and SNSD, in conjunction with the other PIC member states -- will therefore be essential to ensuring that this PIC requirement is properly resolved.

ENGLISH